



TOWN OF BEAUX ARTS VILLAGE

TOWN COUNCIL MINUTES

May 11, 2004
Heckendorn

Mayor Lowry called the meeting to order at 7:30 pm.

PRESENT: Mayor Chuck Lowry, Councilmembers Betty Heckendorn, Malcolm Hickey, Judee Wells, Tom Robinson, and John Rose.

EXCUSED: None.

STAFF: Clerk-Treasurer Sue Ann Spens.

GUESTS: WABA Representative Richard Leider, Marshal Kyle Branum, David Dempster, Steve Eulau, Carol Graham, Paula and Wolf Dix, Martha Schindler, Gail D'Alessio, Sylvia Hobbs, Robin Stefan, Julia Morse Christoffersen, Henry Heckendorn, Pam Donoghue, Walter Scott.

Mayor Lowry announced that before beginning the evening's business, he had an important presentation to make and asked retired Clerk-Treasurer Gail D'Alessio to stand. He then presented her with a plaque commemorating her many years of service to the Town.

MINUTES: Councilmember Heckendorn moved to approve the April 20, 2004 minutes as amended. Councilmember Robinson seconded.

Vote: 5 For, 0 Against, 0 Abstain. Motion carried.

CLERK'S REPORT: Clerk-Treasurer Spens reported that the State Auditor's Office (SAO) has reviewed our question about using Criminal Justice funds for improved street signs (safety) and locking mailbox (security) and that Neither of these proposals qualify. She added that she asked the SAO if the Town should be looking to return the money received thus far to the state, since we are not eligible to use any at this time. She reported that the SAO says the state statutes contain no mechanism for returning excess funding at this time and that we should continue to hold on to the funds received to date.

I-864: Clerk-Treasurer Spens asked the Council to review AWC materials about I-864 and determine if additional information should be distributed to residents.

TOWN BULLETIN DELIVERY: Clerk-Treasurer Spens reported that Mayor Lowry has notified the current bulletin-delivery person that the Town has chosen to terminate the contract and seek new ways to deliver this information to residents. She noted that she and Deputy Clerk Donworth have brainstormed ideas to accommodate WABA's desire to continue getting their news out monthly. She explained that she will mail newsletters bi-monthly with water bills, and Deputy Clerk Donworth will mail a copy to residents in the other months. It was the consensus of the Council that this plan will get bulletins to residents monthly at a cost that is approximately the same as the cost of contract delivery. It was also the consensus of the

Council that other alternatives will be explored, including using email distribution when it becomes feasible.

LOCKING MAILBOXES: Clerk-Treasurer Spens reported that Security Safe and Lock would sell boxes to residents at a discount if we can order at least 20 boxes. She noted that at least 25 families have now responded that they want boxes and asked the Council how to handle the purchase and reimbursements. It was the consensus of the Council to ask each resident who wishes to participate in the bulk purchase of locking mailboxes to write their check to Security Safe and Lock for \$127.30 and to forward their check to the Town by early June so that Clerk-Treasurer Spens can make the purchase without using Town funds for any purchase other than a large locking mailbox for the Town and Water-Department mail.

STATE BUILDING CODE UPDATES: Clerk-Treasurer Spens reported that she has received proposed language from Joe Willis at The McAndrews Group and will work with Town Attorney Stewart to prepare an ordinance to adopt the change from adopting the Uniform Building Code to the International Building Code.

WARRANTS: Councilmember Heckendorn moved to approve the May 11, 2004 warrant list, including warrant numbers 6390 and 6392 through 6414 in the amount of \$42,241.17. Councilmember Rose seconded.

Vote: 5 For, 0 Against, 0 Abstain. Motion carried.

MARSHAL'S REPORT: Marshal Branum reported that there might have been another theft of mail in the Village. He also reported that with the arrival of spring, activity at the beach is increasing so he has prepared a note for the Town bulletin reminding residents to be watchful.

WABA REPORT: WABA Representative Rick Leider reported that WABA the Beach Clean-up and Ivy Attack were successful and that the speed bump on the North Beach Road should be fixed by the end of the month.

Mr. Leider reminded the Council that WABA has retained litigation counsel in the matter of the dispute with the Solaros and that at this time the expense will be paid for from WABA reserves. He stated that WABA has made significant progress in working with property owners abutting WABA property to execute encroachment agreements and that of the 44 properties involved, 37 agreements are complete, 3 are in process, and 4 remain to be contacted.

WATER REPORT: No report.

EMERGENCY PREPAREDNESS: Councilmember Robinson stated he had nothing to report.

MORATORIUM ON TREE CUTTING: Mayor Lowry opened the public hearing on the existing tree moratorium at 7:50pm and stated that, in addition to the written comments contained in the Council packets, he had received a call from the Leysers stating their opposition to the moratorium. He also reported that he has heard there is a new resident whose building plans will be affected by the moratorium if the Council chooses to extend it, but that he and Town Attorney Stewart have discussed the matter and feel there are other avenues of

relief for this resident should the moratorium be extended. He then asked Town Planning Consultant Mona Green to comment on the information she provided for the Council's review.

Planning Consultant Green explained that she had chosen tree ordinances from Hunts Points, Medina, Clyde Hill, and Mercer Island as examples of the regulations in place in other nearby cities. She noted that each of these ordinances encapsulates its community's attitudes toward preserving trees but none prohibit the removal of trees outright. She commented that each ordinance provides a mechanism for removing and replacing trees, particularly when those trees are located in areas where zoning rules allow construction on a lot.

Mayor Lowry remarked that the Clyde Hill ordinance is oriented toward view preservation rather than tree preservation. Planning Consultant Green agreed and commented briefly on details of Clyde Hill's process for reviewing requests to remove trees.

Mayor Lowry then explained that the hearing tonight is not intended to determine what rules are needed but instead will focus on whether the moratorium should be extended beyond the original 30 days set by Ordinance No. 323 so that existing trees are protected while the Planning Commission studies what rules, if any, they wish to recommend the Council enact. He then asked for comments from the public.

David Dempster asked the Council to cease trying to regulate tree cutting on private property and to focus their efforts on managing trees on public property. He stated that he doesn't believe the Town needs an ordinance to encourage continued participation in preserving the ambiance of the Village.

Steve Eulau stated that he has purchased the Hawkes residence on SE 29th Street and that he was attracted to Beaux Arts because of its close-knit neighborhood feel. He explained that his due diligence prior to purchasing this property and starting his reconstruction plans did not reveal that a tree moratorium was on the horizon and now he has completed plans that have been in review with the Fire Department and so have not been submitted to the Town. He added that if the tree moratorium is continued, he will have to seek relief in some form from the moratorium or redesign his house as it may adversely affect two existing trees. He remarked that he feels caught between the rules that were in place when he started his design and the rules as they stand now.

Wolf Dix commented that he thinks the many trees in the Village add to its "feel" but is not sure how best to protect that "feel of the Village". Paula Dix added that she is respectful of peoples' attitudes about private property rights but wants to find a balance with the sense of community the Village enjoys.

Martha Schindler wondered why the moratorium was put in effect in the first place. Councilmember Rose explained that the Planning Commission has been asked to review the need for regulations for trees on private property and that they were concerned that word of this study might prompt an excessive amount of tree cutting in anticipation of such regulations. Ms. Schindler thanked Councilmember Rose for his explanation and stated that she believes the trees in the Village are our "beautiful art".

Rick Leider stated that he strongly opposes the moratorium as well as any regulation of trees on private property. He noted that since its founding in 1908, the Village has seen an ebb and flow of trees. He remarked that he likes the diversity found throughout the Village in different owners' approaches to their landscaping with some preferring the more treed look while others prefer more flowers and shrubs. He added that he is concerned about adding any more restrictions to a property owner's ability to remodel.

Gail D'Alessio commented that she doesn't think there is a need for a tree moratorium and that previous discussions on this topic have always centered on preserving the trees on Town property. She noted that she might support a moratorium provided owners such as Mr. Eulau can be given relief from the sudden change in rules.

Walter Scott stated that he thinks the conversation should be about tree cutting not the moratorium. Mayor Lowry explained that the issue before the Council tonight is only whether to extend the tree-cutting moratorium while the Planning Commission studies regulations.

Councilmember Rose asked Planning Commissioner Sylvia Hobbs about the Planning Commission's memo asking that the moratorium be extended. Ms. Hobbs explained that the Planning Commission remains concerned that some residents may panic that regulations on tree cutting may restrict them from cutting any trees in the future and react by cutting excessively. Councilmember Wells noted that during her tenure on the Planning Commission, this issue was studied and no trees were cut despite the lack of a moratorium.

Robin Stefan remarked that she is amazed the Village doesn't have a tree ordinance, that the value of old-growth trees cannot be calculated, and that Villagers have cherished their urban forest in the past, but that may not be so any more. She noted that eleven trees have been removed from private property in the last five months. She added that the rules could be written to establish a permit process that allows for planned replacement of trees rather than clear-cutting with no replacement. She explained that such a process would not be prohibiting cutting trees but would instead emphasize preservation and replacement.

Julia Morse Christoffersen commented that she supports the extension of the moratorium until regulations that protect significant trees can be enacted. She noted that she sees no difference between protecting trees on private property and the many other restrictions on individual expression imposed by the Town's zoning code.

Kyle Branum stated that protecting trees is a good thing, but that while the moratorium might prevent some reckless behavior, it is more important to protect individual rights.

Henry Heckendorn commented that the Village has always been a community of diversity, and that in the 100 years of its existence, there are likely more trees now than were here then.

Paula Dix asked about Hunts Point's rules. Planning Consultant Green explained that Hunts Point's ordinance uses a process to mitigate tree removal on one part of the property with the planting of new trees on another part.

Walter Scott stated that the diversity of the Village is evident and that both sides of this issue have valid points that should be respected. He remarked that restrictions on tree removal may adversely affect property values and that the assumption that the Village should be treed is not explicitly stated anywhere, so how did we get to that assumption. He added that if property value is lost because a tree cannot be removed, the Town should be compelled to reimburse the property owner for that lost value.

Robin Stefan commented that she hears peoples' concerns about being told what they can and cannot do on their property but that the regulations enacted in other cities are not outright prohibitions and it is unlikely that our regulations would be any more strict than the examples presented tonight. She stated that she feels the alarm expressed about the dangers to private-property rights are out of proportion to the actual possibilities.

Mayor Lowry closed the public hearing at 8:45 pm.

Councilmember Rose offered that the Council's decision tonight will send a powerful message to the Planning Commission. He stated that he feels it is to the Council's credit that it got such a quality public discussion in such a short time frame. He noted that he originally felt the moratorium process was flawed because any future regulations were unlikely to prohibit cutting yet the moratorium does just that. He wondered if there is a pressing public danger that makes continuing this moratorium necessary since the individual decisions made by property owners over the last 100 years have brought us to this point and that we may not agree with every decision an individual makes, but on the balance we will agree with most.

Councilmember Wells stated that she doesn't believe the Town has taken a strong enough role in preserving trees on public property. She remarked that she suspects recent construction trends are different from the longer term trend the Village has experienced up until now and that as new owners seek to maximize the values of their property by building larger homes, more of our large trees will come down. She commented that the Planning Commission asked for this moratorium solely as a means of gaining some breathing room while they study the issue and that she would like to support them in this fashion. She added that she agrees we need to be able to allow some tree removal during the moratorium and that Councilmember Rose's comment about a "clear and present danger" makes her think that increasing the diameter of a protected tree would address the rare situation where someone such as Mr. Eulau needs to remove trees for a pending building project.

Councilmember Rose commented that his wife's concern is that newer property owners may not share the current perception of the value of trees that seems to be shared by the majority of Villagers and that if the trend to the newer attitude continues, the preservationist viewpoint will become the minority position. He then asked what harm there is in not continuing the moratorium.

Councilmember Robinson thanked the Villagers who came to tonight's meeting for sharing their views and stated that he appreciates that in a small community we each have to "deal with" the views of others directly to hash out a solution. He commented that it is clear that over time views change as trees grow and he has no interest in Clyde Hill's approach of protecting views over trees. He added that, on the other hand, he doesn't want to preserve

everything either but feels we need to address trees in groves rather than individual trees since the removal of a few trees in a grove can weaken the root systems and structural integrity of the trees that are left behind. He remarked that he is not sure he wants to see more regulations enacted and believes we can let the moratorium expire without threat of dire consequences. He explained that he would like to see the Village develop some sort of tree-advisory committee formed of volunteers who are knowledgeable about best practices for trees and their protection or removal.

Councilmember Hickey stated that he agrees with much of what has been said tonight and that public opinion seems to be running strongly against both the moratorium and tree regulations. He stated that he thinks the moratorium should be allowed to expire.

Councilmember Heckendorn remarked that she cannot see any reason to get into the mess that will result if the Town decides to tell its residents that they may not cut trees on their own property. She noted that this topic has come before the Council several times over the years that she has served and that public opinion this time around is as strongly against passing tree regulations as it has been in the past.

Mayor Lowry outlined the Council's options for action tonight:

- Do nothing and allow the moratorium to expire at midnight on May 20, 2004.
- Repeal the ordinance now and stop the moratorium tonight.
- Rewrite the moratorium ordinance to change the trees that are protected and the length of time that the moratorium continues to be in effect.

Councilmember Wells suggested that the Council pursue the third option and either increase the diameter of a protected tree or allow the removal of trees that are not in the setbacks, i.e. trees in the building envelope. She added that she still feels it is important to show support for the Planning Commission during their study of this issue.

Councilmember Rose commented that he hears at least two Councilmembers suggesting that the Planning Commission should not pursue the issue of tree regulations further.

Mayor Lowry noted that if no motion is carried tonight, the moratorium will expire at midnight on May 20, 2004.

Councilmember Robinson asked if the Town has the resources to enforce an ordinance that regulates tree cutting. He added that he still likes his idea of a Tree Advisory Committee because it allows for an informed decision. Councilmember Wells reminded Councilmember Robinson that tonight the Council is only concerned with whether to extend the moratorium.

MOTION: Councilmember Wells moved to extend the moratorium established in Ordinance No. 323 for another thirty days after amending the definition of a protected tree to any tree with a diameter in excess of 36 inches at any point except for a tree that interferes with construction that is otherwise allowed by the Town's Building Code and Zoning Code. Councilmember Rose seconded.

On discussion of the motion, Planning Consultant Green commented that thirty days is not enough time for the Planning Commission to study the issue and bring a recommendation to the Council for proposed legislation.

Councilmember Robinson suggested increasing the length of the moratorium to 180 days to allow the Planning Commission enough time to complete their study. He also suggested reducing the diameter of a protected tree to 24 inches.

Councilmember Wells stated that she would like to keep the length of this period as short as possible because it puts the burden on the Council to remain proactive and encourages continued public participation.

Rick Leider commented that if the Town is working toward some sort of managed process for tree removal, we don't need a moratorium.

Julia Morse Christoffersen asked if links to the regulations in other communities can be added to the Town's website. Clerk-Treasurer Spens noted that the new website is not quite ready to publish and the old site is not being maintained.

David Dempster asked that the Council provide the Planning Commission with clear direction on what they should be studying.

Vote: 1 For (Wells), 3 Against (Rose, Hickey, Heckendorn), 1 Abstain (Robinson). Motion fails.

Mayor Lowry noted that the Planning Commission has been given direction in this matter but has not been given a deadline. He then asked Councilmembers what additional information should be shared with the Planning Commission.

Councilmember Wells suggested that they be directed to move as quickly as possible.

Councilmember Rose stated that he hears two Councilmembers who feel no tree regulations are needed and three who think regulations may be of some value but are not sure.

Councilmember Robinson remarked that he feels the Planning Commission should study the issue, even if no moratorium is in place, because he believes Robin Stefan and Julia Morse Christoffersen have raised several valid points and he thinks the issue of protecting groves must be addressed.

Councilmember Wells asked if the Council's June agenda should include an agenda item to discuss further the instructions to the Planning Commission on this issue. Planning Commissioner Hobbs noted that an arborist is scheduled to attend the next Planning Commission meeting to discuss the effects of various regulations and asked if that visit should be cancelled until the Planning Commission has clear instructions from the Council. Planning Consultant Green noted that the arborist who is coming to the meeting works for the Town of Hunts Point and plans to attend the meeting at no charge to the Town as a professional courtesy.

MOTION: Councilmember Wells moved to change the instructions to the Planning Commission from a request to study the issue of tree cutting on private property to a request that they study the issue of tree preservation on public property only. Councilmember Heckendorn seconded.

Vote: 4 For, 0 Against, 1 Abstain (Robinson). Motion carried.

PROPOSED RESOLUTION NO. 208 CALLING UPON THE WSDOT AND SOUND TRANSIT TO ADDRESS THE NOISE GENERATED BY TRAFFIC ON THE EAST CHANNEL BRIDGE AND TO EVALUATE SOUND-MITIGATION STRATEGIES AS PART OF THE EIS FOR THIS PROJECT: Councilmember Rose explained that this ordinance reiterates the Council's request that WSDOT and Sound Transit address noise on the East Channel Bridge.

MOTION: Councilmember Rose moved to adopt Resolution No. 208. Councilmember Hickey seconded.

Vote: 5 For, 0 Against, 0 Abstain. Motion carried.

IMPROVING STREET SIGNS FOR SAFETY: Sylvia Hobbs presented briefly the recommendations of the committee and stated that the committee wishes to recommend brown signs with white writing for two reasons: these signs will have good contrast and be easy to read, and they will be different in appearance from Bellevue's signs which are on each side of the Village, making it clear to drivers that they are not in Bellevue (much as Clyde Hill has done with their signs). She added that Bill Beck can install the new sign posts needed for about \$350 total.

It was the consensus of the Council that Councilmember Hickey should proceed with implementing the recommendations of the Street Sign Committee presented in their written report dated May 11, 2004 (a copy of which is on file with the Town Clerk).

MAYOR AND COUNCILMEMBER REPORTS:

REQUEST FROM THE BOARD OF ADJUSTMENT: Mayor Lowry read a letter to the Council that he received from Board of Adjustment Chair Bob Welsh in which Mr. Welsh asks the Council to provide direction on the issue of water features. It was the consensus of the Council that this issue be forwarded to the Planning Commission for further study as it is a land-use question.

CODE COMPLAINT ABOUT BUILDING HEIGHT: Mayor Lowry stated that he received a complaint from a resident about the height of the Kendall home, which is under construction, being in excess of the thirty-foot maximum set by the Town's Zoning Code. He explained that Joe Willis from the McAndrews Group has already inspected the building plans and site and that the owner has had the actual roof height surveyed and submitted a certified report of the survey results showing that the structure height is in compliance with the Zoning Code. He added that the resident who complained is not satisfied with this response and so the Board of Adjustment will review the complaint and Mr. Willis response at their next meeting to formalize the Town's review and response process.

RESIGNATION FROM BOARD OF ADJUSTMENT: Mayor Lowry reported that he has received a letter from Jan Johnston in which she resigns from the Board of Adjustment effective immediately. He asked the Council to consider possible replacements.

SPRING STREET CLEAN UP: Councilmember Wells reported that the Town's Spring Clean Up is this coming weekend and that notices have been posted, dumpsters ordered, and work parties organized.

ROCKS AT FIVE CORNERS: Councilmember Wells asked Councilmember Hickey to take a look at the rocks placed next to the Billera's at Five Corners to see if they are too close to the roadway. She noted that the rocks were placed to protect the plantings in this area, but the placement of at least one of the rocks troubles her. Councilmember Hickey will take a look at the area and determine if action is needed.

HERTZBERG SHED: Councilmember Hickey reported that the shed on the ROW near the Hertzberg property has been dismantled and the railroad ties have been sent to the dump since WABA was not able to use them as landscaping timbers at the beach.

OUTLET FOR STREET RUNOFF INTO LAKE WASHINGTON: Councilmember Heckendorn commented that sometime ago the Council discussed placing a screen over the pipe that discharges our runoff into Lake Washington. She asked if this task has been accomplished or is it now deemed unnecessary for some reason. Councilmember Hickey will investigate the situation and report at the June meeting.

NEXT MEETING: Clerk-Treasurer Spens reminded the Council that their next meeting is scheduled for June 8th and will be held at Councilmember Hickey's house.

ADJOURN: Councilmember Hickey moved to adjourn the meeting at 10:30pm.
Councilmember Wells seconded.
Vote: 5 For, 0 Against, 0 Abstain. Motion carried.

Respectfully submitted,

Sue Ann Spens
Clerk-Treasurer